THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 22017 of 1997

O r d e r:

The petitioner is a Conductor with the respondents-APSRTC. He was appointed in 1983. On 28.01.1994, while he was conducting the bus, a check was exercised by the checking officials, who issued a charge memo. Pursuant thereto, pending enquiry, the petitioner was placed under suspension vide proceedings dated 03.02.1994. The Enquiry Officer having conducted the enquiry, submitted his report stating that the charges leveled against the petitioner are proved. Based on the enquiry report, a notice dated 30.06.1994 was issued to the petitioner to show cause as to why he shall not be removed from service. The petitioner submitted his explanation thereto on 13.07.1994. Upon consideration of the same, an order dated 29.07.1994 removing the petitioner from service was passed by respondent No.1. Assailing the said order, the petitioner preferred appeal, which was rejected by the Senior Manager vide order dated 25.01.1995. Aggrieved thereby, the petitioner filed review petition before respondent No.1-Regional Manager, who vide orders dated 20.01.1996, set aside the order of removal and reinstated the petitioner into service as Conductor Grade-II without back wages and consequential benefits, treating the period from the date of removal till the date of reinstatement as not on duty for all purposes, and deferred grant of annual grade increment for two years and collected fresh security deposit. It is this order, which the petitioner has assailed in this writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that respondent No.1-Regional Manager having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate authority, and having ordered his reinstatement into service, ought to have granted the consequential reliefs that ensue upon reinstatement, and non-granting of the same is illegal and arbitrary, and more so when the petitioner was not gainfully employed during the period he was out of service and reinstated into service.

Though the writ petition was admitted as far back as on 12.09.1997, no counter is filed till date.

The learned Standing Counsel for the respondents-APSRTIC, however, supported the impugned order. He submitted that the charges against the petitioner stood proved. Though the disciplinary authority passed order of removal, which was confirmed by the appellate authority, the reviewing authority, though concurred with

the view of the disciplinary authority, has taken a lenient view and ordered reinstatement of the petitioner subject to certain conditions without backwages and consequential benefits, which cannot be said to be illegal and arbitrary, and no interference is called for therewith.

On the charges leveled against the petitioner, an enquiry was conducted. In the enquiry, the charges leveled against the petitioner stood proved. In the enquiry, the passengers who were found traveling without tickets in their statement stated that the petitioner having collected Re.1/- from each of them, had not issued the tickets. Based on the enquiry report, a show cause notice was issued, and upon considering the explanation submitted by the petitioner thereto, the disciplinary authority, passed an order of removal, which in appeal was confirmed. However, the reviewing authority has taken a lenient view and ordered reinstatement of the petitioner into service without backwages and subject to certain conditions.

It is a case of non-issuance of ticket to two passengers. The charge leveled against the petitioner stood proved. The reviewing authority, in fact, concurred with the findings of the disciplinary authority and the appellate authority that the petitioner having collected fare from passengers intentionally avoided issuing tickets to them. Non-issuance of tickets by collecting fares from passengers, in fact, is a grave charge of misconduct, which in the present case stood proved. Though the reviewing authority had concurred with the order of the appellate authority, confirming the order of the disciplinary authority, however, felt that the punishment awarded by the disciplinary authority is excessive and disproportionate to the misconduct, and set aside the order of removal, and directed his reinstatement into service without backwages and subject to certain conditions. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey)**. It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the reviewing authority on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural justice. But the reviewing authority has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate authority, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct. In **Karnataka Bank Ltd. v. A.L. Mohan Rao**, the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authority, was set aside by the reviewing authority, it does not mean that the petitioner is entitled to be

granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 7th February, 2006.

KSR